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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 210

THE WILBER NATIONAL BANK OF ONEONTA, NEW YORK, AS ADMINSTRATOR OF THE ESTATE OF JAMES PATRICK MAHAR, DECEASED,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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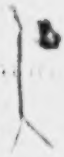

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Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Your petitioner, as administrator of the estate of James Patrick Mahar, deceased, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit entered in the above entitled cause on March 5, 1934 (R. 179), reversing the judgment of the United States District Court for the Northern District of New York,

May 16, 1933, in favor of the plaintiff-petitioner (R. 106). Upon request the time for filing this petition was extended until sixty days from June 2, 1934.

STATEMENT

Your petitioner sued in the District Court under Section 445, c. 10, Title 38, U.S.C., to recover benefits under a policy of Government Life Insurance issued to plaintiff's decedent who had made his estate the beneficiary of his policy. (R. 3-9). Payment had been denied by the Veterans Administration on the ground that the policy had lapsed for non-payment of the premium due September 1, 1927 (R. 91).

Both sides moved for directed verdict (R. 87), the court handed down a written opinion (R. 88-92), and filed its Findings of Fact and Conclusions of Law (R. 92-97).

The "Findings of Fact" by the District Court (R. 93-96), restated in the opinion of the Circuit Court of Appeals, show that James Patrick Mahar enlisted in the military service on or about June 25, 1917, and was honorably discharged on or about April 3, 1919. During his service he contracted with the United States for War Risk yearly renewable term insurance in the amount of $10,000, which lapsed August 31, 1919 for the non-payment of the premium due August 1, 1919 (R. 93).

In June 1927 he applied for the reinstatement of $5,000 of such insurance and its conversion into a policy of Government Life Insurance in the form known as a Five Year Convertible Term Policy (R. 93), and with his application remitted $13.90 to be ap-

plied as premiums (R. 94), receipt of which was acknowledged July 29, 1927 (R. 136-137).

On or about September 19, 1927 the policy was issued to the insured, which policy contained the usual provision that if he became permanently and totally disabled while it was in force payment of premiums would be waived (R. 94) and monthly benefits in the amount of $5.75 per $1,000 of the insurance would be payable while he was permanently and totally disabled (R. 118-134).

In September 1927 Mahar became ill and by October 17, 1927 he had become permanently and totally disabled and remained so until his death on December 24, 1927 (R. 94).

On November 2, 1927 Helen Mahar, on behalf of her husband, remitted $3.95 for a monthly premium as provided in the policy, and a similar remittance was made by her on December 20, 1927 (R. 94).

At no time prior to the death of the insured did the United States give any notice as to the application by it of the original remittance of $13.90 or the two subsequent remittances of $3.95 each, but after his death his widow received from the Veterans' Administration an undated receipt for the sum of $3.95, containing the words: "Tendered in payment of the premium due September 1, 1927." (R. 95). Said receipt (R. 95, 140, 141) also contained the following notation written in ink:

Premiums through January, 1928	$19.75
Received	10.55
Prem. Bal. due	$ 9.20

The $10.55 noted in the above memorandum apparently includes the two remittances of November 2, 1927, and December 20, 1927 (R. 95), and a balance of $2.65 from the original remittance of $13.90.

The court found (R. 95, 96) that "the Government did not until after the death of the said James Patrick Mahar send any notice to Mahar or his family that any premiums were due, or that said policy had lapsed, or that the payment of $13.90 had not been entirely applied to the payment of premiums on the said $5,000 life insurance policy, other than contained in the policy, itself, received on or about September 20, 1927." The court further found: "That the Government in addition to retaining the original $13.90 has retained the said two payments of $3.95 and made no offer during Mahar's lifetime to return said payments." (R. 96).

On the above facts the District Court concluded as a matter of law that plaintiff was entitled to judgment (R. 97), and caused same to be entered (R. 106-108). On appeal the judgment was reversed (R. 180).

Questions Presented

1. Whether, in conducting the Government Life Insurance business as Trustee for the Government Life Insurance Fund, the United States is engaged in the life, total disability, and total and permanent disability insurance business and is obligated to the same rules as to sending out notices, applying premiums and obeying customs, applicable to the commercial insurance companies with which it competes for such business.

2. Whether it is bound by the acts of its agents in the same manner as any other insurer and is estopped to deny payment in this case because of the conduct of its agents.

Reasons for Granting the Writ

This Court has never passed upon the important question of Federal Law involved, and petitioner believes that the Circuit Court of Appeals has decided them contrary to principles enunciated by this Court in *Standard Oil Co. of N. J.* v. *United States,* 267 U. S. 76, 45 Sup. Ct. Rep. 211, 69 L.ed. 519, *White* v. *United States,* 270 U.S. 175, 46 Sup. Ct. Rep. 274, 70 L. ed. 530, and *United States* v. *Worley,* 281 U. S. 339, 50 Sup. Ct. Rep. 291, 74 L. ed. 887,[1] in which *Standard Oil Co.* v. *United States* was distinguished from *White* v. *United States.*

Policies of *War Risk yearly renewable term insurance* are no longer issued but Government Life In-

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[1] A similar question as to War Risk yearly renewable term insurance was presented to this Court in *United States* v. *Worley,* on certificate from the United States Circuit Court of Appeals for the Eighth Circuit. This Court held as follows:

> "1. Upon the facts stated (in the certificate) does the United States, as a matter of law, stand in the position of one who has gone into the business of insurance, and must, therefore, be assumed to have accepted the ordinary incidents of suits in such business?
>
> "Apparently, this question was suggested by language in our decision in *Standard Oil Co.* v. *United States,* 267 U.S. 76, 79, 69 L. ed. 519, 521, 45 Sup. Ct. Rep. 211. While the answer sought might aid in the determination of the proper application of that opinion, it is not necessary for the decision of the case. The question is one of objectionable generality, *United States* v. *Mayer,* 235 U.S. 55, 66, 59 L. ed. 129, 134, 35 Sup. Ct. Rep. 16. It need not be answered.

The *Worley* case involved a claim for interest on a judgment in a suit upon a contract of *War Risk yearly renewable term insurance,* while this case is concerned with a policy of *Government Life Insurance.*

surance is a going concern, writing new policies in excess of 20,000 per annum amounting to $80,000,000 insurance. For certain business it is in active competition with commercial life insurance companies, namely, insurance against death, total disability and/or total and permanent disability for officers and enlisted men entering upon service in the Army, Navy, Marine Corps and Coast Guard, and women entering upon service in the Army and Navy Nurse Corps; also for veterans of the World War who are insurable risks according to accepted standards.

Policies are written in substantially all usual and familiar forms. Losses, other than those due to the extra hazards of war, are paid from the Government Life Insurance Fund which is derived exclusively from the premiums paid by policy-holders, and from interest on investments in Government securities and loans on policies and adjusted service certificates. Title 38 U.S.C. c. 10, §443, Appendix A, p. 22. This Fund now amounts to approximately $650,000,000, and the annual income amounts to about $25,000,000 from interest on investments and $70,000,000 from premiums. There are about 620,000,000 policy holders with insurance amounting to $2,782,708,503 in force. The Fund is available solely to pay losses, dividends, refunds to policy-holders and judgments. The expense of administering the Fund is borne by the Government but is comparitively insignificant as practically all those so engaged are employed by the Government for other purposes and this work is in addition to their other duties.

It is of great importance to present and future policyholders to know whether they are dealing with the Government in its sovereign capacity and clothed with immunity from responsibility for the acts of its employees, as held by the Circuit Court of Appeals on the strength of *White* v. *United States, supra,* or whether it has waived that immunity and in acting as the Trustee for a Mutual Life Insurance Company it is liable as any other insurer, as found by the District Court following *Standard Oil Co.* v. *United States, supra.* Especially is this the case since claims are being adjudicated by the Veterans Administration to the number of 5,000 annually and the large number of suits on such claims pending in the Federal Courts is increasing.

It would appear that the decision in the case at bar depends upon the answer to the questions presented for it is practically conceded that unless the immunity of the Government extends to the acts of the agents of the Government Life Insurance Fund the insurance claimed in this case should be paid. Petitioner so believes and submits that the judgment of the Circuit Court of Appeals should be reversed.

WILLIAM WOLFF SMITH,
Counsel for Petitioner.

Brief in Support of Petition

Opinions

The opinion of the Court of Appeals is reported in 69 Fed. (2d) 526.

The opinion of the District Court is in the Record, pp. 88-92.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938, 28 U.S.C. §347. Upon request the time for filing this petition was extended until sixty days from June 2, 1934.

Statement of the Case

The facts stated in the foregoing petition (pp. 2-4) are adopted as a part of this brief.

Statutes Involved

The statutes involved are set forth in the Appendix, *infra,* pp. 20-23.

Specification of Errors

The Circuit Court of Appeals erred

1. In holding that in administering the Government Life Insurance Fund the Government is not to be regarded as an ordinary insurance company.

2. In holding that there was no estoppel and the policy lapsed for the non-payment of the premium due September 1, 1927.

3. In holding that the failure to pay premiums prior to October 2, 1927, resulted in a lapse of the policy which may not now be held to be waived by the conduct of the Government's employees.

4. In reversing the judgment of the District Court.

SUMMARY OF ARGUMENT

A summary of the argument will be found in the petition—"Reasons for Granting the Writ."

ARGUMENT

Thought as to Government Life Insurance is divided into two schools diametrically opposed to each other, and the existing confusion will doubtless persist until the atmosphere is cleared by a decision from this Court.

The first school believes that the Government Life Insurance business approximates the marine insurance business discussed in *Standard Oil Co.* v. *United States,* 267 U.S. 76, 45 Sup. Ct. Rep. 211, 69 L. ed. 519, and the principles there laid down are applicable to suits upon claims against the Government Life Insurance Fund.

The second school maintains that Government Life Insurance is an outgrowth of War Risk yearly renewable term insurance and the applicable principles are those in *White* v. *United States,* 270 U.S. 175, 46 Sup. Ct. Rep. 274, 70 L. ed. 530.

The District Court accepted the *Standard Oil* case as controlling, and in his Conclusions of Law (R. 76) Judge Bryant applied it to this case as follows:

> "2. That the United States went into the insurance business, issued policies in familiar form and

it must be assumed thereby to have accepted the ordinary incidents of suits in such business.

"3. That the United States Government engaged in the life insurance business in competition with private insurance corporations and thereby became obligated to the same rules as to sending notices and applying premiums and obeying customs, applicable to private insurance corporations, and has failed to give notice and keep the insured informed as required by fairness, equity and law.

"4. That by its failure to explain its allocation of moneys paid, failure to give notice respecting future premiums, failure to return premiums and funds for many months after it now claims the policy had lapsed, and general failure to provide necessary information and explanation to the insured, the defendant has estopped itself from withholding payment because of the alleged lapse."

In *State Bank and Trust Co.* v. *United States,* 16 Fed. (2d) 439, cited by Judge Bryant, the United States Circuit Court of Appeals for the Sixth Circuit said: "We are inclined to approach the controversy as we would any other between insurer and insured." This was an action to compel the Veterans' Bureau to continue payments of insurance to the guardian of an illegitimate child of the insured soldier, who had taken out the insurance for the benefit of plaintiff's ward and who had acknowledged its paternity in his will. Applying well recognized principles of insurance law the court found for the plaintiff and awarded costs on the theory that the Veterans' Bureau "has a fund from which not only the principal sum but, in cases like this, the costs can be properly paid." The court may

have had in mind the Government Life Insurance Fund, which, it would seem, is available for the payment of costs if so provided in the judgment. In the *State Bank and Trust Co.* case, however, the claim was on a policy of War Risk yearly renewable term insurance. This Court denied certiorari April 18, 1927.

The views of the second school of thought are summarized in the following extracts from the opinion of the United States Circuit Court of Appeals for the Second Circuit, Manton, C.J., (R. 179-180):

> "It is the appellee's contention that the United States Government is bound by the acts of its agents in the same manner as any other insurer and that by electing to receive the premium for September it waived any right it might have had to insist upon a cancellation of the policy for failure to pay the premium due September 1st; that it thereby made the policy in full force during September and October. * * The claim that there was such a waiver cannot be sustained. * * * The United States is bound by its agents only to the extent that it consents to be so obligated. * * * The Government is not regarded as an ordinary insurance Company. An agent of the United States has no power to place liability upon it by an act of omission which he could not do by commission. This is so firmly settled as to forbid holding that when the Government entered a new field, it broadened the powers of employees to bind the Government where they had no such power in other fields. Therefore, there was no estoppel and the policy lapsed by non-payment."

The Court in its opinion cited *Crawford* v. *United States,* (CCA 2) 40 Fed. (2d) 199, *Raives* v. *Raives,* (CCA 2) 54 Fed. (2d) 267, *Birmingham* v. *United States,* (CCA 8) 4 Fed. (2d) 508, and *United States* v. *Loveland,* (CCA 3) 25 Fed. (2d) 447, but rested upon *White* v. *United States, supra,* as distinguished from *Standard Oil Co.* v. *United States, supra.*

Of the cases cited the only one which involved a Government Life Insurance policy was *Crawford* v. *United States,* in which Judge Manton also wrote the opinion. In the *Crawford* case the expression is employed: "*Appellant* is held only to the extent that *it* expressly consents to be held on *its insurance risk.*" (Italics supplied.) But the United States has no *insurance risk* in connection with Government Life Insurance except that incident to the hazards of war, not involved in either this case or the *Crawford* case. It is also thought probable that the expression of the opinion of the court as to §2 of the Act of August 9, 1921, 42. Stat. 198, would be modified by the views of this Court as to §5 of the Economy Act, Title 38 U.S.C. §705, set out in the opinion in *Lynch* v. *United States,* Adv. Ops. Oct. Term 1933-78 L. ed. 997-1005. There is no question in the case at bar as to the validity of the policy which was the issue in the *Crawford* Case.

In *Raives* v. *Raives* the question involved was fraud in connection with the reinstatement of a policy of *War Risk yearly renewable term insurance,* and in *Birmingham* v. *United States* the issue was whether the acceptance of premiums after the death of the insured validated a policy of *War Risk yearly renewable term insurance. United States* v. *Loveland* involved ques-

tions relating solely to *War Risk yearly renewable term insurance.*

Petitioner believes that in the instant case the Circuit Court of Appeals failed to recognize the character and incidents of the Government Life Insurance Fund and to appreciate the conditions under which it is being administered by employees of the Government.

Origin of Government Insurance

The Bureau of War Risk Insurance was established by the Act of September 2, 1914 (c. 293, §5, 38 Stat. L. 711, 9 Fed. Stat. Anno, 2d. ed. p. 1302) within a few days after Europe went to war, to enable American owners of vessels and cargoes to obtain from the Government insurance which could not be had from private companies except at prohibitive rates threatening the extinction of American commerce and shipping. *Jackson* v. *United States,* (D. C.) 29 Fed. (2d) 981, *Standard Oil Co.* v. *United States, supra.*

April 6, 1917 the United States entered the World War and October 6, 1917 the Act of September 2, 1914 was amended to provide policies of insurance for soldiers, sailors and marines in the military and naval service. 40 Stat. 409. The reasons which actuated Congress are stated in Senate Document No. 131, 72d. Congress, 1st Session, "Federal Laws relating to Veterans of Wars of the United States, annotated," Chapter IX—Insurance, p. 253. They are discussed in *United States* v. *Worley,* 281 U. S. 339, 50 Sup. Ct. Rep. 291, 74 L. ed. 887.

This insurance was not issued "in familiar forms." On the contrary only one form was provided by law,

namely "That during the war and thereafter until converted the insurance shall be *term insurance for successive terms of one year each.*" §404, Act of October 6, 1917. (Italics supplied.)

The distinction is developed in *White* v. *United States, supra,* the opinion having been written by Mr. Justice Holmes who wrote the opinion in *Standard Oil Co.* v. *United States, supra.* It is interesting to note that while the Government lost money on the yearly renewable term insurance it made millions out of Marine insurance. *United States* v. *Worley, supra.*

Government Life Insurance

Government Life Insurance, however, is an undertaking distinctly different from either the marine insurance or the yearly renewable term insurance. By §404 of the Act of October 6, 1917, it was provided that not later than 5 years after the termination of the war "the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be provided by regulations and as the insured may request." The time for conversion was later extended to July 2, 1927. (*Appendix A,* p. 21.)

A description of the forms of policies of Government Life Insurance, premiums, conditions for reinstatement or conversion to higher or lower forms, paid up insurance, cash surrender value, extended insurance, etc., is found in Senate Document 131, *supra,* pp. 253-263. Attention is especially invited to ¶4, p. 255, which reads in part as follows:

> "The premiums paid by holders of converted insurance policies are deposited into the Treasury to

the credit of the United States Government Life Insurance Fund. The Government acts in the capacity of trustee of the fund, administering the payment of all claims thereunder and the investment and reinvestment of the fund in interest bearing obligations of the United States or bonds of the Federal loan banks."

See also, Title 38 U.S.C. c. 10, §443, *Appendix A*, p. 22.

Government Life Insurance is described in Insurance Form 882, Veterans Administration, just issued, (*Appendix B*, p. 24), as follows:

"United States Government Life Insurance is essentially mutual insurance, the Government acting only as a trustee. Premiums and all other income are deposited in a separate trust fund, designated as the United States Government Life Insurance Fund, which is administered by the Government for the sole benefit of the policyholders. • • •

"The Government bears all of the expense incident to administration, as well as all losses traceable to the extra hazards of the military and naval service."

Administrative Expense

A certain amount of machinery is necessary to segregate the losses due to "the extra hazards of the military and naval service," (the wording of the statute is "hazards of war,"), and as the Veterans' Administration maintains agencies in all States for hospitalization and examination of claimants for benefits of all kinds, and for the adjudication of claims for pension, compensation, civil service pension and yearly renewable term

insurance, etc., the additional cost of administering the Government Life Insurance Fund is a mere trifle.

While those administering the Fund are employees of the Government they are actually employed to perform other and strictly governmental duties. Their insurance activities are in addition to their other work and in performing them they are acting as agents for a Mutual Life Insurance Company competing for business with other insurance companies and issuing the same form of policies.

Policy-Holders and Policies

The benefits of Government Life Insurance are not confined to veterans of the World War. Officers and enlisted men of the Army, Navy, Marine Corps and Coast Guard, and members of the Army Nurse Corps, female, and Navy Nurse Corps, female, are entitled to take out such policies without medical examination if they apply within 120 days after they enter the service. Title 38 U. S. C. Supplement VII, c. 10, §511. (*Appendix A,* p. 20). Veterans of the World War are entitled to take out such insurance if they are insurable risks. Title 38 U.S.C. c 10 §511 (b).

Policies are written in the usual forms including ordinary life, five-year level premium term, 20 payment life, 30 payment life, 20 year endowment, 30 year endowment, endowment maturing at the age of 62, etc. Premiums are based upon the American Experience Table of Mortality and interest at 3½% per annum. Title 38 U.S.C. Supplement VII c. 10, §512. *Appendix A,* p. 21. The return from investments, however, is considerably higher than 3½%.

All policies provide for total and permanent disability benefits, to meet which a contingent reserve has been established by diverting surplus income from investments and reducing the dividends otherwise payable. Administrator's Report 1933, p. 26. *Appendix C*, p. 26. In some cases dividends have been discontinued to cover this liability. Insurance Form 882, Veterans Administration, *Appendix B*, pp. 24-25.

If the insured so desires a *total disability* provision is included in the policy under which benefits are payable after the fourth month and during the continuance of the total disability. This benefit is distinct from the *total and permanent disability* benefit, and total disability benefits may be paid separately or in addition to payments of total and permanent disability benefits. An additional premium is charged for the total disability protection. Title 38 U.S.C. Supplement VII c. 10, §512 b.

The report of the Administrator of Veterans' Affairs for 1933, states that during the fiscal year of 1933 1,924 policies were reinstated, carrying insurance of $10,382,-448, and 20,917 applications (*new business*) were approved aggregating $80,565,934, as compared with 19,412 applications, (*new business*), amounting to $77,178,650 approved during the fiscal year of 1932. The total number of policies in force on June 30, 1933 was 616,069, amounting to $2,782,708,583 insurance. The report further shows (p. 27) that $677,553,878.14 has been paid into the fund by policy-holders, and at the end of the calendar year of 1932 there was a balance on hand of $609,523,765.03 invested in Farm Loan

bonds, loans on Government Life Insurance policies and adjusted service certificates, and $2,073,433.97 cash. Other "non-ledger assets" brought the total resources of the Fund up to $632,230,892.62 (Report, p. 72). The annual income from invested funds is approximately $25,000,000, and from premiums about $70,000,000.

Additional data from this report will be found in the *Appendix C*, pp. 26-28.

CONCLUSION

It is true that this suit was brought against the United States by its consent (Title 38 U.S.C. c. 10, §445) but the United States is not being sued in its sovereign capacity, but rather as Trustee for the Government Life Insurance Fund, for if plaintiff finally prevails payment will be made wholly from the Fund and the United States will pay nothing. Title 38 U.S.C. c. 10, §443, *Appendix A*, p. 22.

We believe the facts and the law amply sustain the opinion of the District Court that "under the facts in this case, it would be unconscionable to allow a private company to avoid its obligation on the ground of delayed premiums. The same principle should be applied against the defendant in this case. * * * Having elected to become an insurer and to cast aside its immunity from suit, the Government must have its liabilities or rights as an insurer determined by the same rules as any other insurer and by the same course of reasoning as is applied by the court in reaching a decision in a like case between private parties." (R. 91).

It is respectfully submitted that the decision of the Circuit Court of Appeals should be reversed, and the judgment of the District Court should be affirmed.

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APPENDIX A

STATUTES

TITLE 38 U.S.C. SUPPLEMENT VII

Part III

Insurance

Sec. 511. Persons entitled to; amounts; time for application for; to whom payable; expense of; premium rates.—In order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department protection for themselves and their dependents, the United States, upon application to the bureau and without medical examination, shall grant United States Government life insurance (converted insurance) against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000 upon the payment of the premiums as hereinafter provided. Such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation: *Provided,* That any member of the reserve forces whose application was accepted at a time when he was in attendance at a military or naval training camp or station, and from whom premiums were collected, and who becomes or has become totally or (*and?*) permanently disabled, or dies or has died, shall be deemed to have made valid

application therefor. This proviso shall not authorize the granting of more than $10,000 insurance to any one person: *Provided further,* That each officer and enlisted man of the Coast Guard who is serving on active duty on July 2, 1926, or who subsequent thereto enters the Coast Guard Service, shall be granted insurance in accordance with the terms of this section upon application within one hundred and twenty days after July 2, 1926, or date of enlistment or entry into the Coast Guard, whichever is the later date, and before retirement, discharge, or resignation.

* * * * * *

The United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at 3½ per centum per annum. This section shall be deemed to be in effect as of June 7, 1924. (As amended July 2, 1926, c. 723, §14, 44 Stat. 798; May 29, 1928, c. 875, §13, 45 Stat. 967.)

Sec. 512. Term insurance; when terminated; conversion to elected policies; payment.—Except as provided in the second paragraph of this section, nor later than July 2, 1927, all term yearly renewable insurance held by persons who were in the military service after April 6, 1917, shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, five-year level premium

term, and into other usual forms of insurance, and for reconversion of any such policies to a higher premium rate or, upon proof of good health satisfactory to the director, to a lower premium rate, in accordance with regulations to be issued by the director, and shall prescribe the time and method of payment of the premiums thereon, but payment of premiums in advance shall not be required for periods of more than one month each, and may be deducted from the pay or deposit of the insured or be otherwise made at his election: *Provided,* That no reconversion shall be made to the five-year level premium form or policy * * *

38 U.S.C. Ch. 10, §443:—United States Government Life Insurance Fund; premiums paid on account of converted insurance credited to; payments from; reserve funds.—All premiums paid on account of insurance converted under the provisions of Title III hereof shall be deposited and converted into the Treasury to the credit of the United States Government life insurance fund and shall be available for the payment of losses, dividends, refunds, and other benefits provided for under such insurance, including such liabilities as shall have been or shall hereafter be reduced to judgment in a district court of the United States or in the Supreme Court of the District of Columbia. Payments from this fund shall be made upon and in accordance with awards by the director. The bureau is authorized to set aside out of the fund so collected such reserve funds as may be required, under accepted actuarial principles, to meet all liabilities under such insurance; and the Secretary of the Treasury is hereby

authorized to invest and reinvest the said United States Government life insurance fund, or any part thereof, in interest-bearing obligations of the United States or bonds of the Federal farm-loan banks and to sell said obligations of the United States or the bonds of the Federal farm-loan banks for the purposes of such fund. Act of June 7, 1924, c. 320, s. 18, 43 Stat. 612.

APPENDIX B

Insurance Form 882.

VETERANS ADMINISTRATION

WASHINGTON

Dear Sir:

A new schedule of dividends payable on United States Government life insurance policies has been adopted, effective January 1, 1934. This schedule is based on the results of an extensive study, by competent and disinterested consulting actuaries, of the experience under this insurance over a period of years, and equitably reflects the sources from which gains and savings are derived.

United States Government life insurance is essentially mutual insurance, the Government acting only as a trustee. Premiums and all other income are deposited in a separate trust fund, designated as the United States Government Life Insurance Fund, which is administered by the Government for the sole benefit of the policyholders. The premiums charged are the net rates in accordance with the American Experience Table of Mortality on a 3½% reserve basis, and include no charge for total permanent disability protection. The Government bears all of the expense incident to administration, as well as all losses traceable to the extra hazards of the military and naval service.

Dividends on United States Government life insurance represent a return to the insured from the excess of the premiums paid over and above the actual cost of the insurance protection. Under the schedule of dividends, those policies on which the premiums and earnings to date have been adequate

to build up the reserves required on account of both the death and disability benefits provided in the policy, will receive a dividend representing their equitable share of the amount of the surplus, gains and savings to be distributed. Those policies which have not yet accumulated the necessary reserves will not become entitled to dividends unless and until the reserves required have been accumulated.

The accumulations credited to the group which includes your above-numbered policy are not sufficient to provide the required reserves, and, consequently, it is regretted that it is necessary to advise you that no dividend is payable on this policy.

Respectfully,
H. L. McCoy,
Director of Insurance.

APPENDIX C

FROM THE ANNUAL REPORT OF THE ADMINISTRATER OF VETERANS' AFFAIRS FOR 1933.

P. 25. INSURANCE—At the close of this fiscal year there were 616,069 Government life (converted) insurance policies in force aggregating $2,782,708,583 of insurance as compared with 641,218 policies in force, aggregating $2,977,083,467 of insurance at the close of the preceding year. This decrease is directly due to the difficulties experienced by many policyholders confronted with the adverse conditions resulting from the prolonged economic depression. While the number of new policies totalling 20,917 issued during this fiscal year exceeded the 19,412 new policies issued during the fiscal year 1932, the number of policies lapsed and surrendered for cash greatly exceeded the number fiscal year. During this fiscal year 15,178 policies were of policies terminated for these causes in the preceding surrendered for cash, an increase of 76% over the 8,597 policies surrendered for cash in the fiscal year 1932. Correspondingly 40,057 policies were lapsed, an increase of 96% over the 20,456 policies lapsed during the fiscal year 1932. In this connection it is appropriate to note that 123,530 policy loans were granted as compared with 105,058 in 1932 and 80,046 in 1931.

A new schedule was adopted for dividends payable during the calendar year 1933 providing for a reduction in dividends on all level premium life and endowment policies. There has been reserved for this purpose in 1933, $3,650,000, a decrease of approximately 50%

in the amount of dividends paid in 1932. No dividends were authorized for payment on the 5-year term policies for the reason that the higher rate of death and disability under this type does not justify the return of a cash dividend.

The surplus earnings of the United States Government life insurance fund for this year were less than those of the preceeding year due to the relatively large payments for death claims and disability benefits and the lower interest yield from the funds loaned on the security of adjusted service certificates, on which the interest rate was reduced by law. In the interest of sound administration it was, therefore, decided to reduce the dividend for 1933 to a more conservative scale in order to add a larger proportion of the so-called surplus earnings, otherwise distributable as dividends, to the contingency reserve, which has been built up to provide for future disability payments, thus strengthening the financial structure for the greater protection of all policyholders.

The premium charged for Government life insurance is the net rate based on the American Experience Table of Mortality with interest at 3½% per annum, compounded annually. There is no loading for expenses added to the net premium since the Government pays all cost of administration. In addition to the death benefit, a liberal total permanent disability benefit without limit as to the age before such disability must occur, is included in each Government policy for which no extra premium is charged. It has, therefore, been necessary to make provision for the liability incurred on account of this disability benefit out of the surplus earnings of

the United States Government life-insurance fund. A very substantial contingency reserve has already been built up, and a study is now being made to determine the amount of the reserve required to meet the disability losses in future years. When this evaluation of the Government life-insurance fund has been completed a definite policy for future dividend distribution will be adopted.

* * * * * *

Premium income—United States Government life-insurance premiums are deposited to the credit of the United States Government life-insurance fund from which are paid claims on account of total permanent disability and death, dividends, and refunds. During the fiscal year ending June 30, 1933, premiums amounting to $67,961,784.36 were received on United States Government life-insurance policies. The amount of United States Government life-insurance premiums to date totals $677,553,878.14.